

REMARKS

Claims 2-6 are in the case. These claims stand rejected under 35 USC 103 over Takada et al., US Publication Number 2002/0089931, in view of Shipley, US Patent Number 5,633,742. It is respectfully submitted that these claims should be allowed.

Initially, in regard to all these claims, it is respectfully submitted that it would not be obvious to combine these documents as suggested by the Examiner. All of the setting and changes of values of flag fields in Takada et al. are related only to the control of the flow of data on the Internet (see for example paragraphs [0002]-[0009]). None of these settings or changes of flag field has anything to do with testing. The Examiner apparently recognizes this and goes on to state:

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Takada et al. by using the features, as taught by Shipley, in order to provide a monitoring system for communication devices that are battery powered (see columns 3-4).

The Examiner in particular refers to column 14, lines 25-35 of Shipley, quoted in full:

The transmitter 31 of the present invention is provided with a battery check circuit 181 which is utilized to monitor the battery 71 periodically to provide an advance warning that the battery will need replacement in the near future. The battery check circuit 181 includes the transistor Q7 and a Zener diode D1 of a suitable type such as a LM385 connected in the manner shown. This battery check circuit 181 tests the battery voltage during every transmitted packet. If the battery voltage is at an acceptable level and a switch message is not being sent, a battery check message BOK is sent along with the normal transmitter identification confirming the battery condition.

The Examiner also refers to columns 3 and 4 of Shipley. Lines 35-41 of column 3 of Shipley are quoted in full:

In general it is an object of the present invention to provide an optical data communication and location apparatus, system and method and transmitters and receivers for use therewith which provides continuous real time information on the location of people, equipment, files and other mobile objects in a facility.

As will be noted, the type of device described in Shipley is quite limited in its scope of operation, and consequently lends itself to battery power. The Internet as discussed in Takada et al. is not a monitoring system and is not, nor would it be, battery powered.

As is well understood, the Examiner must provide an apparent reason to combine the known elements in the fashion claimed and must articulate this reasoning with a rational underpinning to support a conclusion of obviousness. As stated in *KSR International Co. v. Teleflex, Inc.* (U.S. Supreme Court), 550 U.S.____ (2007):

Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit. See *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) (“[R]jections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”).

Applicants submit that not only is there no apparent reason to combine the known elements of Takada et al. and Shipley, such a change would not be undertaken as it would be impractical.

The Examiner states:

Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art (citing *In re Keller*).


The fact that it would be impractical to bodily incorporate features of a secondary reference into the structure of a primary reference is strong evidence that the combination would not be obvious.

It is therefore respectfully submitted that it would not be obvious to combine the disclosures as suggested by the Examiner, and that claims 2-6 should be allowed on this basis.

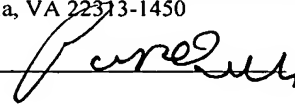
In regard to claims 3, 4, 5 and 6 each of these claims includes the limitation of not testing the device if the flag of the packet class is in the second state. As set forth in the portion of Shipley quoted above (column 14, lines 25-35), the battery check tests the battery voltage during every transmitted packet. There is no situation where a packet is transmitted and the battery is not tested. Thus, even if the references were combined as suggested by the Examiner, there is no disclosure of not testing the device if a flag of the packet class of the generated packet is in a second value (claims 3, 4, 5 and 6). It is therefore respectfully submitted that even if the references were combined as suggested by the Examiner, this limitation would not be met, i.e. the resulting method would not anticipate applicant's claim 3-6.

It is therefore respectfully submitted that claims 2-6 should be allowed. Reconsideration and allowance of such claims are respectfully solicited.

Respectfully submitted,


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